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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,604	07/07/2003	Naomi M. Jenkins	2162.107500/TT5487	7792
23720	7590	03/30/2010		
WILLIAMS, MORGAN & AMERSON 10333 RICHMOND, SUITE 1100 HOUSTON, TX 77042				
EXAMINER				
VO, HEN XUAN				
ART UNIT		PAPER NUMBER		
2863				
MAIL DATE		DELIVERY MODE		
03/30/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/614,604

Applicant(s)

JENKINS ET AL.

Examiner

HIEN X. VO

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2009.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 1-45 is/are allowed.
6) ☒ Claim(s) 46-50 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 07 July 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 46-50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. It is not tied to a specific machine nor does it transform underlying subject matter.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 46-48 rejected under 35 U.S.C. 102(e) as being anticipated by Adams, III et al. (U.S. Patent No. 6,740,534).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With respect to claim 46, Adams, III discloses a determination of a process flow based upon fault detection analysis that includes performing a process step upon a workpiece (see e.g. abstract, Fig. 3, item 310), receiving tool state data relating to the process step (see e.g. col. 6, lines 10-20); correlating said tool state data to the workpieces (see e.g. col. 5, lines 16-22); adjusting a metrology routing based upon the correlating the tool state data to the workpiece (see e.g. Fig.2, step 270; col. 2, lines 30-35).

With respect to claims 47-48, Adams, III discloses the invention as claimed including processing a subsequence workpiece (see e.g. Fig.3, item 320); the tool state data further comprises acquiring at least one of a pressure data, a temperature data, a humidity data, and a gas flow rate data relating to the process step performed upon the workpieces (see e.g. col. 4, lines 64-67).

Reasons of allowable

4. The following is a statement of reasons for the indication of allowable subject matter:
5. For claims 1, 16, 26, 38, 44, the reason of allowable are performing a dynamic metrology routing adjustment process based upon said tool state analysis, said dynamic metrology routing adjustment process comprising correlating said tool state analysis to said batch of workpieces and adjusting a metrology routing based upon said correlation.
6. For claims 17, 22, 42, the reasons of allowable are a process controller operatively coupled to perform a tool state analysis upon said processing tool and to perform a dynamic metrology routing adjustment process based upon said tool state analysis, said dynamic metrology routing adjustment process comprising correlating said tool state analysis to said batch of workpieces and adjusting a metrology routing based upon said correlation.
7. Applicant's arguments filed 04/07/09 have been fully considered but they are not persuasive. For claims 46-50, they are not tied to a specific machine nor do they transform underlying subject matter. For claims 46-48, the prior art still reads on the limitation of the claimed invention such as performing a process step upon a workpiece (see e.g. abstract, Fig. 3, item 310), receiving tool state data relating to the process step (see e.g. col. 6, lines 10-20); correlating said tool state data to the workpieces (see e.g. col. 5, lines 16-22); adjusting a metrology routing based upon the correlating the tool state data to the workpiece (see e.g. Fig.2, step 270; col. 2, lines 30-35).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HIEN X. VO whose telephone number is (571)272-2282. The examiner can normally be reached on M-F (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A. Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hien Vo
3/25/10

Drew A. Dunn
/Drew A. Dunn/
Supervisory Patent Examiner, Art Unit 2863